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U.S. Department of Homeland Security
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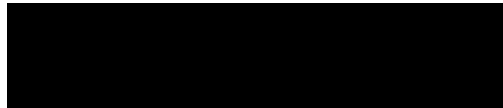


**U.S. Citizenship
and Immigration
Services**



FILE: LIN 03 030 51710 Office: NEBRASKA SERVICE CENTER Date: APR 05 2004

IN RE: Petitioner:
Beneficiary:

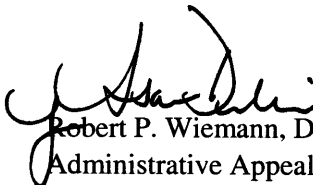


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(a) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner operates a tree farm. It desires to employ the beneficiary as a tree field laborer for three years. The director determined that the petitioner had not submitted a temporary agricultural labor certification, Form ETA 750, from the Department of Labor (DOL) when filing the petition.

On appeal, the petitioner states that he has now sent in the Application for Alien Employment Certification, Form ETA 750.

The regulation at 8 C.F.R. § 214.2(h)(5)(i)(A) states in pertinent part:

An H-2A petition must be filed on Form I-129. The petition must be filed with a single valid temporary agricultural labor certification.

The petition was filed on November 8, 2002 without a temporary agricultural labor certification, or notice detailing the reasons why such certification cannot be made. Absent such certification from the Department of Labor or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

The petitioner states on appeal that he has now sent in the Application for Alien Employment Certification, Form ETA 750. However, neither the statute nor the regulations allows for an extension of time to complete a certification during this proceeding.

This petition cannot be approved for another reason. The petition indicates that the dates of intended employment are from March 2002 to March 2005. Consequently, the petitioner has not established that its need for the beneficiary's service is temporary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.